IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 615 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINKARRAI RATILAL BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 615 of 1999

MR LR PATHAN for Petitioner No. 1 (absent)

Mr B D Desai, APP for Respondent No. 1

MR AMIT J SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/01/2002

ORAL JUDGEMENT

The applicant-original accused has brought this revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short,

'the Code'), challenging the order dated 21.7.1999 recorded by the learned Special Judge of the Special Court of City and Sessions Court at Ahmedabad. The said Court passed the said order below application Exhs 81 and 84 filed by the present applicant. The learned Judge found that these two applications were without any merit and, therefore, the said applications were ordered to be dismissed. It seems that the present petitioner has been charge-sheeted for offences punishable under sections 120-B, 420, 471 read with section 468 of IPC as well as for offence punishable under section 18 of the Prevention of Corruption Act, 1988. The present petitioner submitted an application on 11.3.1999 stating that no offence was made out on the face of record and, therefore, the present petitioner-original accused no.1 be discharged from the said offence. The learned trial Judge heard the parties and came to a finding that there was a prima facie case against the present petitioner and, therefore, he could not be discharged. Therefore, the learned Judge passed an order dismissing the application for his discharge from the offence aforesaid. Feeling aggrieved by the order of the trial court, the petitioner has preferred this revision application before this Court. It has been mainly contended here that though there was no material before the trial court to proceed ahead against the petitioner, the trial court has not considered the said aspect of the case and has committed serious illegality by overlooking the evidence and material placed before it. The trial court has failed to appreciate that M/s. Supreme Diamond Works and M/s. Shreenathji Diamond Works were the proposed units and they were not in existence. It was not at all mandatory to visit the premises and the technicalities were not required to be gone into. That these facts were not properly appreciated by the learned Judge while dismissing the application of the present petitioner. That even otherwise the order passed by the learned trial Judge is illegal and deserves to be set aside. The petitioner herein, therefore, prays that the present revision application be allowed and the order impugned be quashed and set aside and the present petitioner be discharged from the offence in question.

2. After hearing, this revision application was admitted by this court. Adjournments were sought on behalf of the petitioner and they were granted. It seems that after some adjournments, the matter was adjourned on 7.12.2000, at the instance of the learned Advocate for the petitioner. Again on 26.12.2000, adjournment was sought by the learned Advocate for the petitioner. Adjournment was again sought on behalf of the petitioner

on 7.9.2001. Similar requests of learned Advocate for the petitioner was granted on 15.10.2001 as well as on 6.11.2001. Then on 9.1.2002, learned Advocate for the petitioner was absent. But on account of his sick note, the matter was adjourned to today. Today also, the matter was called out twice, however, the learned advocate for the petitioner was not present. Today, it is found that leave note has been filed by Mr L R Pathan, learned Advocate for the petitioner. According to the High Court Rules, leave notes are not applicable to criminal matters and this being a criminal revision application, leave note filed by the learned Advocate for the petitioner will have no bearing on the present case.

3. It appears from the order of the trial court that the trial court has considered the pros and cons of the case while dismissing the said application for his discharge from the offence. In para 10 of the judgment, the learned trial Judge has observed at length as follows:

"I agree with Mr M Bhagwani, learned Special P.P. for CBI, that there is sufficient ground to proceed with the case against both the applicants-accused. The sanction order also clearly shows that applicant Dinkarray Ratilal Bhatt (accused no.1) was serving as Branch Manager in state Bank of Saurashtra and applicant Rameshbhai Babubhai Patel (accused no.5) was posed as Clerk in State Bank of Saurashtra, Khadia Branch, Ahmedabad during 1989-90 and both the accused entered into criminal conspiracy with Shri Girish Patel, proprietor of M/s.Supreme Diamond Works, Shri Nagjibhai R Patel and Shri Purshottam Patel with the object to cheat the bank and to dishonestly induce it to deliver the loan amount to the aforesaid firms, i.e. M/s. Supreme Diamond Works and M/s.Shreenathji Diamond works which were not within the jurisdiction of the said Rakhial Branch and also to Shri Nagjibhai R Patel, on the basis of forged documents and committed the offence of criminal conspiracy, cheating, etc. Accused No.2-Girish Patel of M/s.Supreme Diamond Works submitted a loan application for s.4,25 lacs in the name of his firm on 23.3.89 along with one Project Report prepared by Mr. Girish Patel and a guarantee letter issued by M/s.V M Gems and Jewellery, one quotation of M/s.A K Traders, one Experience Certificate of M/s.Anil Diamond Polishing Works

and Technical Feasibility Report of D.I.C. The proposal was prepared by applicant Shri D R Bhatt himself and the same was forwarded to the Regional Manager vide letter dated 28.3.1989. Applicant Shri D R Bhatt was a Branch Manager and he was then asked by the Regional Manager on 26.6.89 to submit a revised proposal after making necessary changes. Since the price of machinery were on higher side and as per the opinion of Technical Officer, the maximum permissible loan would be Rs.2.92 lacs. The Branch again prepared a revised proposal which was submitted to the Regional Office on 4.7.89 by the Branch Manager Shri D R Bhatt (applicant) The Regional Manager then sanctioned the loan of Rs.2.92 lacs on 11.7.89. Thereafter the Branch issued banker's cheque bearing No.157665 dated 11.7.89 for Rs.2.92 lacs on 11.l7.89 in favour of M/s.A K Traders and handed over to Shri Girish D Patel (accused no.2) instead of sending the same through Regd.Post as per rules. The same was deposited in the account of M/s.A K Traders on 12.7.89, subsequently the same was withdrawn by the borrower and misutilised. There is also a charge that since the Branch Manager was empowered to sanction the loan upto Rs.1,00,000/the loan of Rs.45,000/- was sanctioned by Shri D R Bhatt (accused no.1) on 18.10.89 and banker's cheque no.263951 dated 19.10.89 for Rs.45,000/was issued in favour of M/s.A K Traders. The said cheque was handed over to shri Nagjibhai R Patel (accused no.3) instead of sending the same through Registered Post as per rules. The said cheque was deposited in the account of M/s. A K Traders on 20.10.89 and subsequently the same was withdrawn by the borrower and misutilised. There is also a charge that accused no.4 Purshottam M Patel submitted a loan application for Rs.1.95 lacs and the loan proposal was forwarded to the Regional Manager on 19.12.89 by Branch Manager Shri D R Bhatt (applicant) recommending the proposal and subsequently the loan of Rs.1.95 lacs was sanctioned by the Regional Manager vide letter dated 12.3.90. There is also a charge that accused no.1 - Mr D R Bhatt had neither verified genuineness of the documents supplied by the borrowers and not conducted any pre and post sanction inspection of the premises of the borrowers nor ensured the end-use of the loan amount so sanctioned. There is also a charge

> that Shri D R Bhatt accepted illegal gratification in the form of shares amounting to Rs.10,000/- as a motive for sanction of the aforesaid loan to the aforesaid borrowers from Shri R B Patel (accused no.5) Hence both the applicant-accused can be said to have committed offences punishable under sections 120-B, 420, 471 read with sec.468 of IPC and under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. Moreover, witness Dhirjlal Patel has stated in his statement dated 6.4.94 that his son had applied for a loan and he had signed in it. He has further stated in his statement that the aid application form was already filled in and he had signed in it as per the instructions of his son Girishbhai (accused no.2). The statements of Dineshkumar Harjivandas and Hitendrabhai S Patel also support the case of the prosecution. Hitendrabhai has stated in his statement that he is serving at Naroda Road Post Office since last twelve years. He has further stated that the address of Anil Diamond Polishing Works is wrong and there is no such firm in existence. Hence letter no.70197 was not served and it was sent bank."

Even in the last concluding para, the learned trial Judge has observed that it becomes clear from the evidence discussed above that there is prima facie ground to proceed with the trial against the accused and it cannot be said at this stage that there is no case against the applicants. Having regard to the facts of the case, I find that it is not possible to disagree with the view adopted by the learned trial Judge as aforesaid. Even otherwise, this is not an appellate jurisdiction and the petitioner has filed this criminal revision application and, therefore, the powers of revision cannot be equated with the powers of an appeal. The materials on record cannot be appreciated at the stage of framing of charge. Sufficiency of evidence or material cannot be gone into. If there is some case or some prima facie case against the accused person, he cannot be discharged.

4. In support of his contention, the learned Advocate for the second respondent has referred to a couple of decisions. First is the case of Munna Devi v. State of Rajasthan, reported in 2001(8) SCC 88. In the said case, charge was framed against the respondent for offences under section 376, 511, 451 and 354 of IPC. The

respondent accused filed petition before the High Court which was allowed by the High Court by quashing the charge framed against the accused. Thereafter, appeal was filed before the Apex Court. There the Supreme Court has observed in the judgment that revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. It is also observed that while exercising such power, the High court has no authority to appreciate the evidence in the manner as the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the First Information Report even if they are taken at the face value and accepted in their entirety, do not constitute the offence for which the accused has been charged.

5. Another citation can be gathered from the case of State of UP v. Udai Narayan, reported in 1999 AIR SCW 3921. There it has been observed in para 6 that the "High Court committed serious error in discharging the accused persons by advancing elaborate arguments on scanning and scrutinizing the evidence and materials produced by the prosecution." It is further observed that "suffice it to say that a bare perusal of the judgment of the High court would indicate that the High Court exceeded its jurisdiction in ordering discharge of the accused persons as if sitting in appeal against an order of conviction." Any way, things are very clear that the power of appeal and power of revision are different and they cannot be equated.

6. It is not shown by the petitioner as to how the case is without any material or without any evidence. Once it is found that there is some evidence or material against the present accused, as said above, the court cannot go into sufficiency of material on record. In that view of the matter, there appears to be no merit in the revision and consequently, it deserves to be dismissed. As stated above, I have waited for Mr L R Pathan, learned Advocate for the petitioner or someone on behalf for the petitioner to assist the Court. However, though two calls were made in the first session, none appeared for the petitioner or for Mr L R Pathan. Even in the second session also none has come forward to argue or even to mention the matter. As said above, leave notes are not applicable in criminal matters and as this is a criminal matter, leave note will not be entertainable. The petitioner was required to make alternative arrangement, if his learned Advocate was

unable to attend the matter.

7. For the foregoing reasons, there is no merit in this Revision Application and the same is accordingly dismissed. Rule discharged.

15.1.2002 [D P Buch, J]
msp